IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.REF.No. 7 of 2006()

SC.431/2005 of ADDITIONAL DISTRICT COURT (ADHOC), THODUPUZHA

.....

INITIATED ON THE REPORT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (ADHOC-I), THODUPUZHA.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

Crl.Reference No.7 OF 2006

Dated this the 11th day of December, 2006.

ORDER

This reference has been made by the learned Sessions Judge, Thodupuzha on coming to know that an order of committal made by a Magistrate is wrong and incorrect. In as much as the learned Sessions Judge does not have powers to quash the order of committal, reference has been made to this Court by the learned Sessions Judge.

2. The prosecution is under Section 8 and Section 55 of the Kerala Abkari Act. There are two accused persons. The 2nd accused to whom reference specifically relates, is a minor, aged less than 18 years on the date of the commission of the offence, ie. 12.07.2002. His date of birth is 20.05.1986. In these circumstances, the learned Sessions Judge perceived that the 2nd accused being a minor, committal of the case by the learned Magistrate to the Court of Sessions is incorrect and improper. The learned Magistrate ought to have proceeded in accordance with provisions of Section 7 of the Juvenile Justice (Case and Protection of Children) Act, 2000, it is pointed out.

3. There can be absolutely no doubt on the question of law. The error pointed out is real and genuine. Under Section 7 of the Juvenile Justice (Case and Protection of Children) Act, 2000, the Magistrate should not have committed the case in so far as the 2nd accused/juvenile is concerned. He should have followed the mandate of Section 7 of the Juvenile Justice (Case and Protection of Children) Act, 2000, and sent the case to the Juvenile Justice Board/Chief Judicial Magistrate having jurisdiction.

4. I am, in these circumstances, satisfied that this Criminal Reference deserves to be answered in favour of the 2nd accused, quashing the order of committal passed against him by the learned Magistrate. It is not necessary to send the matter back to the learned Magistrate to facilitate the Magistrate following the procedure under Section 7 of the Juvenile Justice (Case and Protection of Children) Act, 2000. The learned Sessions Judge can be directed to forward the 2nd accused/the juvenile to the Juvenile Justice Board/Chief Judicial Magistrate having jurisdiction so that such Board/Magistrate can deal with the 2nd accused/juvenile in accordance with the provisions of the Juvenile Justice (Case and Protection of Children) Act, 2000. To

eliminate further delay, I direct the learned Sessions Judge to ensure that the 2nd accused is forwarded to the Juvenile Justice Board if one has been constituted for the area or the Chief Judicial Magistrate to be dealt with under the provisions of the Juvenile Justice (Case and Protection of Children) Act, 2000. This Criminal Reference is answered accordingly. I am satisfied that it is not necessary to wait any longer for issue and return of notice to the 2nd accused for passing this order.

R.BASANT
JUDGE

rtr/